

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

IN RE: HOMELAND SECURITY
INVESTIGATIONS SUMMONS NO.
ICE-HSI-MF-2019-00338

Case No. _____

Filed Under Seal – Level I

APPLICATION FOR ORDER COMMANDING GOOGLE, INC.
NOT TO NOTIFY ANY PERSON OF THE EXISTENCE OF SUMMONS

The United States requests that the Court order Google, Inc. not to notify any person (including the subscribers or customers of the accounts listed in the summons) of the existence of the attached summons and related preservation letter for approximately 180 days.

Google, Inc. is a provider of an electronic communication service, as defined in 18 U.S.C. § 2510(15), and/or a remote computing service, as defined in 18 U.S.C. § 2711(2). Pursuant to 18 U.S.C. § 2703, the United States obtained the attached summons, which requires Google, Inc. to disclose certain records and information to the United States. This Court has authority under 18 U.S.C. § 2705(b) to issue “an order commanding a provider of electronic communication service or remote computing service to whom a warrant, summons, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, summons, or court order.” *Id.*

The attached summons was issued in connection with an investigation into targets of an ongoing investigation relating to child exploitation. The premature disclosure of the existence of the summons will alert the account subscribers to the pending investigation, which may cause them to destroy or alter evidence, or flee the United States to avoid prosecution. In this case, such an order would be appropriate because the attached summons relates to an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation, and its disclosure may alert the targets to the ongoing investigation. Accordingly, there is reason to

believe that notification of the existence of the attached summons will seriously jeopardize the investigation or unduly delay a trial, including by giving targets an opportunity to flee or continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, intimidate potential witnesses, or endanger the life or physical safety of an individual. *See* 18 U.S.C. § 2705(b). Some of the evidence in this investigation is stored electronically. If alerted to the existence of the summons, the subjects under investigation could destroy that evidence, including information saved to their personal computers.

Section 2705(b) provides that when the government is not required to notify the subscriber or customer that it is serving process on the provider, then the Court may order the provider not to give notice, provided one of the five risks set forth in § 2705(b) is present. For the reasons listed above, the government has shown that there is reason to believe that notice by the provider would cause one of the enumerated harms. The government is proceeding here using a summons under 18 U.S.C. § 2703(c)(2). Section 2703(c)(3) provides that when the government proceeds under § 2703(c) (*i.e.*, when it is only seeking records of the provider, and not any content of the subscriber or customer), the government is not required to provide notice to the subscriber or customer. Thus, the government has satisfied all the conditions of § 2705(b).

WHEREFORE, the United States respectfully requests that the Court grant the attached Order directing Google, Inc. not to disclose the existence or content of the attached summons for approximately 180 days, until on or about August 21, 2019, except that Google, Inc. may disclose the attached summons to an attorney for Google, Inc. for the purpose of receiving legal advice.

Executed on February 21, 2019.

/s/ Georgiana L. Konesky
Georgiana L. Konesky
Assistant U.S. Attorney
State Bar # 685375
53 Pleasant Street, 4th Floor
Concord, NH 03301

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ORDER

The United States has submitted an application pursuant to 18 U.S.C. § 2705(b), requesting that the Court issue an Order commanding Google, Inc., an electronic communication service provider and/or a remote computing service, not to notify any person (including the subscribers or customers of the accounts listed in the summons) of the existence of the attached summons and preservation letter for approximately 180 days.

The Court determines that there is reason to believe that notification of the existence of the attached summons will seriously jeopardize the investigation, including by giving targets an opportunity to flee or continue flight from prosecution, destroy or tamper with evidence, and change patterns of behavior. *See* 18 U.S.C. § 2705(b).

IT IS THEREFORE ORDERED under 18 U.S.C. § 2705(b) that Google, Inc. shall not disclose the existence of the attached summons, or this Order of the Court, to the listed subscriber or to any other person before August 21, 2019, unless otherwise ordered by the Court, except that Google, Inc. may disclose the attached summons to an attorney for Google, Inc. for the purpose of receiving legal advice.

Date

United States Magistrate Judge